BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. TALUKDER and S. TALUKDER,) OTA NO. 241218378
APPELLANT.)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, May 13, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at 12900 Park Plaza Drive, Suite 300, Cerritos, California, 90703, commencing at 9:39 a.m. and concluding at 10:13 a.m. on Wednesday, May 13, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ SARA A. HOSEY
Panel Members:	ALJ SETH ELSOM ALJ GREG TURNER
For the Appellant:	MUHAMMAD KHILJI
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD AMELIA BREEN JACKIE ZUMAETA

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 6.)

(Department's Exhibits A-P were received into evidence at page 6.)

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Cerritos, California; Wednesday, May 13, 2026

9:39 a.m.

JUDGE HOSEY: We are now going on the record.

This is the Appeal of Talukder, OTA Case No. 241218378. Today is May 13th, it is 9:39 a.m. We're here in Cerritos, California.

And I'm lead Administrative Law Judge Sara Hosey. Today my panel members are Hearing Officer Seth Elsom and Administrative Law Judge Greg Turner.

Can I have the parties identify themselves for the record, starting with Appellants.

MR. KHILJI: Muhammad Khilji, for the Appellant.

JUDGE HOSEY: Thank you.

Franchise Tax Board.

MS. BREEN: Amelia Breen, for Franchise Tax Board.

MS. ZUMAETA: Jackie Zumaeta, for Franchise Tax Board.

JUDGE HOSEY: Thank you.

As stated in the Minutes and Orders, the issues on appeal are: Whether Appellants have met their burden to establish error in FTB's proposed assessment or the federal information upon which it is based; and whether Appellants have established reasonable cause to abate the accuracy-related penalty.

We premarked the Exhibits 1 through 6 for Appellants and A through P for the Franchise Tax Board. No objections were raised by either party. So, Exhibits 1 through 6 and A through P are now admitted as evidence into the record.

(Appellant's Exhibits 1-6 were received into evidence by the Administrative Law Judge.)

(Department's Exhibits A-P were received into evidence by the Administrative Law Judge.)

Mr. Khilji, are you ready to begin your arguments?

MR. KHILJI: Yes. Thank you.

JUDGE HOSEY: Okay. You have 20 minutes.

PRESENTATION

MR. KHILJI: Okay. So, for 2014 tax return that was audited by the IRS, there was a complete disregard for accrual basis and tax recognition by the RA. So, there was an arbitrary adjustment made to the tax return at the federal level. As an accrual-basis taxpayer, the taxpayer was allowed to make proper accruals and -- and deduct them in their S corp return. Taxpayer, however, appealed that by filing an amended return. They paid the tax and then filed an amended return subsequent to that, and a claim for refund.

It's very simple. The taxpayer has provided, as a part of this appeal, all the accounting information that provides the evidence that they were certain accruals that were not -- not allowed by the IRS. And since FTB is going off of that information, once again, those accruals are being disregarded. So, the taxpayer in this S corporation had about $112,000 of tax accrual that were disallowed. So, the assertion here is that the taxpayer is -- is providing -- is not providing any evidence or documentation, FTB's assertion is and, therefore, this is an empty assertion.

However, taxpayer has provided documentation, full accounting information, has given complete GL, and all of the accounting information that -- how these accruals are computed and how they were valid. Unfortunately, that was at the revenue agent level. That was -- those were disregarded, and they continue to be disregarded. So, the taxpayer in this case needs to be able to -- in the shared information with the FTB, and they need to have at least someone look at it and opine on it and provide -- if needed, provide further information.

The answer from the FTB has been well, you know, it's all based upon federal adjustment that was made. However, within FTB's own letter that we received, dated -- the opening brief dated 2/20/25, it states that FTB is not necessarily obligated to follow federal action. So, there's a contradiction there. If FTB is not obligated to follow federal action, then why is FTB obligated to follow an error that is -- that was made by the revenue agent in this case by disregarding accruals.

Now, the accrual and tax, you know -- and the taxpayer has provided exhaustive summary of what those accruals were and where the law is in their IRS Code section -- various Code section, including 446, that those accruals were for -- for an accrual business taxpayer, which on the evidence by what is marked on the tax return and continue to be marked on the tax return of the S corporation. Those accruals were the rights of the taxpayer to be able to be deducted just -- just in terms of consistency, as well as where the accruals are allowed under accrual-basis tax -- tax method. But I don't believe FTB has reviewed or analyzed those because I see no evidence of that in their -- in their answer to our -- our appeal.

And taxpayer has -- has met the burden of proof by following the action. The taxpayer has filed an amended return and a claim for refund with the IRS with Form 843. They have not received an answer for 843 yet, but they do get communication from the IRS that -- that it is under review, or it will be processed. That was one way the taxpayer met their burden.

And the other way the taxpayer met their burden of proof was by providing full accounting information as a part of this appeal process and established the error that was made by the IRS. That evidence has to be looked at before -- before it can be weighted into the establishing of tax liability. So, the tax liability that is being established by -- by FTB is really not based upon any calculation, any review, any accounting information that had been provided. So -- so far that has been not taken into account.

So, regarding the accuracy-related penalty, which is the final part of my presentation is accuracy-related penalty is assessed based upon returns. The IRS is -- had assessed an accuracy-related penalty because the amount of tax was sufficiently high to warrant that, but it's a catch 22. The tax was high because IRS has disallowed certain accruals as we've discussed earlier. So, the accuracy-related penalty is not action or disregard or -- or something that taxpayer has done to be warranted. So, if there's an accuracy-related penalty based upon an error by a third party, such as the IRS, that would be not a sound basis to assess the accuracy-related penalty.

So if the first part of this appeal is answered, then it automatically eliminates the need to look at accuracy-related penalty. But right now it's just off of federal revenue agent made a mistake, did not consider or did not -- did not regard the corporation that is duly an accrual-basis corporation for tax purposes. Based on that error, assessed to what amounts to be about $50,000 of tax and accuracy-related penalty of another $10,000.

But now taxpayer is assessing the same thing because the same error that was made by the revenue agent is causing taxpayer to have accuracy-related penalty. But I don't see a basis for assessment of the accuracy-related penalty, unless taxpayer completely failed to provide any documentation or show the basis of how they were able to arrive at a taxable -- tax liability in this case, and taxpayer has met that burden and continue to clarify what their position, what were their accounting information was. And I've already stated earlier that taxpayer has not -- Appellant has not received a refund from the IRS yet, and it's under review. So, at this point, it's not only not appropriate to assess the tax and the liability, but also, it's -- it's continued to propagate an error that was made by a revenue agent and -- and unfortunately, make it more burdensome for our taxpayers.

So, outside of that, I don't have any additional information to share, but I'll be happy to answer any questions.

JUDGE HOSEY: Okay. Thank you, Mr. Khilji. I'm going to see if the panel has any questions for you, starting with Judge Turner.

JUDGE TURNER: Not at this time. Thank you.

JUDGE HOSEY: Okay. And Hearing Officer Elsom?

HEARING OFFICER ELSOM: Hi. I did have one question, and you've referred several times to an error. I just wanted to clarify, were any amount of the actual expenses adjusted, or were they all allowed and simply shifted from one year to the other? I -- I believe in your -- it's September of 2021 letter, Appellant had mentioned that the IRS misinterpreted his -- Appellants' desire to report some expenses in '13.

MR. KHILJI: No. That -- that was a confusion to answer your question that I came across too. But what happened, there was a separate audit in 2013. And so, the -- and by the same revenue agent. And they were -- they were clearly familiar with the -- with the taxpayer's accrual basis accounting. But when they did the 2014 audit, they disregarded accrual basis audit and said, well, you know, because on an accrual basis audit, when you balance sheet, amount changes. That's what your deduction is on a liability side of the balance sheet.

So, when you study the balance sheet, there was sufficient increase in the liability that those were the accruals for that tax year, which is 2014. So, it was not -- it was not a deduction in 2013 and shifted to '14. It was independent of 2013. So, the -- and the balance sheet supports that -- that assertion.

HEARING OFFICER ELSOM: Okay. Did they actually disallow any amount of the expenses, though? Meaning, Appellant did not prove that he actually incurred the expense or had paid the expense?

MR. KHILJI: What they disallowed was the adjusting entries for accrual basis accounting.

HEARING OFFICER ELSOM: Okay.

MR. KHILJI: Yeah.

HEARING OFFICER ELSOM: Thank you.

JUDGE HOSEY: Thank you, Mr. Khilji.

I'm going to move to the Franchise Tax Board for your presentation.

Ms. Breen, are you ready to begin?

MS. BREEN: Yes, I am.

JUDGE HOSEY: Okay. You have 20 minutes. Thank you.

PRESENTATION

MS. BREEN: Good morning. My name Amelia Breen, along with my co-counsel Jackie Zumaeta, representing the

Franchise Tax Board.

The issues on appeal today are: Whether the Appellants have demonstrated error in FTB's proposed assessment or the federal information on which it is based; and two, whether they've demonstrated reasonable cause to abate the accuracy-related penalty or ARP. With respect to FTB's assessment, when the IRS makes changes or corrections to a taxpayer's return, the taxpayer must either agree that the federal adjustments are accurate, or establish that they are erroneous. FTB's deficiency assessment, based on a federal audit, is presumed to be correct, and the taxpayer bears the burden of proving error. Unless the taxpayer provides documentation or other evidence to establish an error an in the federal adjustment or change, FTB's assessment based on the federal adjustments is presumed correct.

Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. A taxpayer must provide uncontradicted credible competent and relevant evidence to show that FTB's determination is incorrect. In the absence of such evidence, the determination must be upheld. On appeal, FTB requested Appellants' federal account transcript. It does not indicate that the IRS retracted or revised its assessment.

Appellants have not offered any evidence on appeal that demonstrates that the federal assessment was changed beyond the 2023 letter from the IRS stating that their account was being reviewed. This letter was almost three years ago. The IRS requesting additional review time should not be equated with a revision or deletion of the assessment of additional tax. Without further evidence, Appellants have not met -- met their burden of proof. Therefore, FTB's proposed assessment should be sustained.

Secondly, with respect to the accuracy-related penalty, a 20 percent accuracy-related penalty is imposed in reference to the portion of the underpayment attributable to one, negligence or two, any substantial understatement of income tax. Substantial understatement of income tax exists when the understatement for a taxable year exceeds the greater of either, 10 percent of the tax required to be shown on the return or $5,000. Here, per Appellants' federal individual master transcript, which is FTB's Exhibit O, the penalty was imposed federally for substantial understatement.

As discussed in our opening brief, the ARP was imposed properly by FTB. Taxpayer's must concede the accuracy of any federal adjustments, including penalties or prove error. A California penalty, based on a federal audit, is presumptively correct, and the taxpayer must show that it is wrong. A taxpayer has the burden of proof to show that FTB's determination is incorrect.

The federal account transcript indicates that the IRS assessed the penalty on March 12th, 2019, and it has not been abated. Thus, FTB's imposition of the penalty for the 2014 tax year is presumed correct. A -- an accuracy-related penalty based on substantial understatement can be abated upon a showing of substantial authority or adequate disclosure and reasonable basis for the position taken. As Appellants have not raised these defenses, they, therefore, have not proved error in the imposition. FTB's respectfully requests this decision be sustained.

Thank you. I'm happy to answer any questions.

JUDGE HOSEY: Thank you.

Judge Turner, do you have any questions for the Franchise Tax Board?

JUDGE TURNER: Just one. Does the taxpayer have to establish that the IRS made an adjustment, or do they have to establish that the IRS adjustment was erroneous? That seems to be like, if I understand your testimony, was the taxpayer failed to show that the IRS made a subsequent adjustment to their determination. And I think what the taxpayer seems to be arguing is that the adjustment was made in error. So, I'm trying to understand your position here.

MS. ZUMAETA: Yeah. So -- I apologize. The Franchise Tax Board would follow a federal determination assuming that it conforms with California law. And so, the taxpayer can either show that the IRS made a subsequent adjustment, which actually, you know, changes the tax liability. Or outside of that, even if the IRS does not make that adjustment, they can show us through evidence that that adjustment was erroneous, and we would make the adjustment on our end, even though the IRS had not made that adjustment.

JUDGE TURNER: So, subsequently then here, even though the IRS apparently has not made the subsequent adjustment, the FTB nevertheless, would have gone through an analysis to evaluate the taxpayer's argument?

MS. ZUMAETA: Exactly.

JUDGE TURNER: Perfect. Thank you.

JUDGE HOSEY: Hearing Officer Elsom, any questions for the Franchise Tax Board?

HEARING OFFICER ELSOM: Hi, I did. Just to follow up on what Judge Turner had asked you, can you explain what type of analysis was done regarding Appellants' argument or the extent of that? Was there any determination not to request additional information from him, or can you maybe refer to an exhibit that references that?

MS. ZUMAETA: So, that would have been done through our -- our audit and protest unit. So, we do not have that information with us currently, but we would be happy to provide that information in subsequent briefing if you would like us to do so.

HEARING OFFICER ELSOM: Okay. Thank you.

JUDGE HOSEY: Okay. Thank you.

Mr. Khilji, you have five minutes for any rebuttal or final statements you'd like to make.

CLOSING STATEMENT

MR. KHILJI: So, the -- the document that were provided by the Appellant in terms of the whole accounting for the entire 2020 -- 2014 tax year, including the tax return itself is -- is accrual basis, what I believe has not been looked at, and hasn't been reviewed. FTB's position is that that's with the audit division, and they will get us an answer for that. That's one thing Appellant would like to see is that assessment of that information or review of that information; either refute it, accept it, or deny it, but at least should be reviewed.

So, that's basically the entire case because if you have -- if you are a accrual basis taxpayer and you're denied the accrual, not only -- not only you're foregoing certain deduction in one year, but you're also are -- you are also are impacted by it in the future years. So, giving up a deduction in this year would impact taxpayer in 2015 and -- and for future years as well. That's why IRS has a placed a -- a lot of emphasis, you know. The Treasury Regulations have spent a considerable amount of time in crafting regulations that prevent that. And so, it is the -- what happened to this taxpayer is going to impact the taxpayer not only in 2014 but in future years as well.

So that's -- that's beyond what the scope of this appeal is. But, at the same time, the information that was provided, again, must be -- must be looked at to reach a determination, while IRS has not completely shut the door on the taxpayer as well. And they continue to need more time, whether it was the administratively they're behind, or there is something that we don't understand, but they continue to request more time to -- to look at the information and look at our claim for refund. Federal tax transcript do not indicate that -- that they have reached a conclusion on it yet, you know, most recent transcripts.

So, taxpayer has reasonable -- more than reasonable basis to ask that at this point the accuracy-related penalty not be assessed because the inaccuracy or the amount of tax, that increase was due to an error by the -- by the revenue agent. It was -- it was something that we are trying to correct on the -- on the federal side. And -- and we have provided sufficient evidence that establishes our reason to deduct those accruals again, that were denied or not considered. I think the revenue agent mistake was that they treated it as a cash-basis taxpayer, which is -- which is a large error on their part.

MS. ZUMAETA: Judge Hosey, can we just make one clarifying comment related to -- to the -- on the Appellants' presentation. We just wanted to make sure that my answer for the last question that Hearing Officer Elsom provided was correct. We do have information from the IRS letters, but what we are lacking is the attachments that were provided. So, if the taxpayer were able to provide those attachments, that would allow us to do additional analysis on the account. What we have is just the letters from the IRS that indicates that, you know, they're -- they're not making changes.

And then Amelia will give you a little bit about the account transcript as well so you that can have that information.

MS. BREEN: So, we have an account transcript from last Wednesday that indicates that there's still no revisions or retractions on the federal account transcripts; and FTB is happy to provide that, should it be needed.

JUDGE HOSEY: Okay. Thank you. I'm going to take a five-minute recess with the panel. We're going to discuss what we'd like to see.

So, we're off the record.

(There is a pause in the proceedings.)

JUDGE HOSEY: We're back on the record.

Thank you for your patience.

After speaking to the panel, we'd like some more information.

Mr. Khilji, you referenced attachments to the letter, the agent report and schedules. Do you have access to that information that was provided to the IRS?

MR. KHILJI: Yes, I can get access to it. Yes.

JUDGE HOSEY: Okay. That would be great.

I think we're gonna leave the record open. I will draft and provide the parties with a post-hearing order for what we're looking for, what documents we'd like to see.

And how long do you think you would need to access those documents and provide it to the parties and to the Office of Tax Appeals?

MR. KHILJI: Probably 30 days.

JUDGE HOSEY: Okay. That's great. We can definitely do that. I will also give Franchise Tax Board time to review any documentation and provide the response.

So we will conclude the hearing today, but hold the evidentiary record open for additional briefing and to produce additional documents. Following the additional briefing and the parties' responses, then OTA will close the record and issue an opinion 100 days from that date.

So, any questions before I conclude today's hearing?

I will provide the dates in the post-hearing order that will be provided to both parties.

MR. KHILJI: No, thank you. I don't have any questions.

JUDGE HOSEY: Okay. Great.

Franchise Tax Board, any questions?

Okay. With that. Today's hearing is concluded, and we are now off the record.

(Proceedings concluded at 10:13 a.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 11th day of June, 2026.

____
ERNALYN M. ALONZO
HEARING REPORTER